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IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re)	Case No. 12-37291-elp11
Beall Corporation,)	
Debtor.)	
_____)	
Beall Corporation,)	Adversary
)	Proceeding No. _____
Plaintiffs,)	
v.)	COMPLAINT TO AVOID TRANSFERS
H.W. Metal Products, Inc.,)	PURSUANT TO 11 USC § 547 AND TO
)	RECOVER PROPERTY
Defendant.)	TRANSFERRED PURSUANT TO
)	11 USC § 550 AND RECOVER
)	PREFERENTIAL TRANSFERS
_____)	

21 Beall Corporation ("Plaintiff" or the "Debtor") files this complaint (the "Complaint")
22 to avoid and recover transfers made by the Debtor to H.W. Metal Products, Inc.
23 ("Defendant"), and in support thereof alleges upon information and belief that:

24 **NATURE OF THE CASE**

25 1. Plaintiff seeks to avoid and recover from Defendant, or from any other
26 person or entity for whose benefit the transfers were made, all preferential transfers of

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AND TO RECOVER PROPERTY TRANSFERRED PURSUANT TO 11 USC § 550
AND RECOVER PREFERENTIAL TRANSFERS**

1 property that occurred during the ninety (90) day period prior to the commencement of
2 the Debtor's bankruptcy proceedings, pursuant to 11 USC §§ 547 and 550.

3 JURISDICTION AND VENUE

4 2. This Court has subject matter jurisdiction over this adversary proceeding,
5 which arises under Title 11, or arises in, and relates to a case under Title 11, pursuant
6 to 28 USC §§ 157 and 1334(b).

7 3. The statutory and legal predicates for the relief sought herein are
8 Sections 547 and 550 of the United States Code, 11 USC §§ 101-1532 (the "Bankruptcy
9 Code"), and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure (the
10 "Bankruptcy Rules").

11 4. This adversary proceeding is a "core" proceeding to be heard and
12 determined by the Court pursuant to 28 USC § 157(b)(2) and the Court may enter final
13 orders for matters contained herein.

14 5. Pursuant to Local Bankruptcy Rule 7008-1, Plaintiff states that it does
15 consent to the entry of final orders or judgments by the Court if it is determined that the
16 Court, absent consent of the parties, cannot enter final orders or judgments consistent
17 with Article III of the United States Constitution.

18 6. Venue is proper in the District of Oregon pursuant to 28 USC §§ 1408 and
19 1409.

20 PROCEDURAL BACKGROUND

21 7. On September 24, 2012 (the "Petition Date"), the Debtor commenced a
22 case by filing a voluntary petition for relief in this Court under Chapter 11 of the
23 Bankruptcy Code.

24 8. On July 18, 2013, the Debtor filed the Debtor's Second Amended Plan of
25 Liquidation [Docket No. 447] (the "Plan").

26 9. On September 18, 2013, the Court confirmed the Plan and entered the

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1 Order Confirming Debtor's Second Amended Plan of Liquidation [Docket No. 485] (the
2 "Confirmation Order").

3 10. Pursuant to the Plan, general unsecured creditors of the Debtors are
4 impaired and will not be paid in full.

5 11. The Debtor retained all claims and causes of action, including all
6 Avoidance Actions, including those asserted herein, under the Plan and Confirmation
7 Order.

8 THE PARTIES

9 12. The causes of action set forth herein are being prosecuted in accordance
10 with the Plan, Confirmation Order, and any other applicable requirements.

11 13. The Debtor is authorized to commence this suit pursuant to the Plan and
12 brings this action in accordance with the requirements of the Plan pursuant to the
13 Confirmation Order.

14 FACTUAL BACKGROUND

15 14. Prior to the Petition Date, the Debtor manufactured and sold trailers and
16 other products.

17 15. The Debtor maintained business relationships with various business
18 entities, including Defendant, through which the Debtor regularly purchased, sold,
19 received, and/or delivered goods and services.

20 16. As a trailer manufacturer and seller, the Debtor regularly purchased goods
21 from various entities including vendors, creditors, suppliers, and distributors. The
22 Debtor also regularly paid for services used to facilitate its business operations.

23 17. During the ninety (90) days before the Petition Date, that is between
24 June 25, 2012 and September 24, 2012 (the "Preference Period"), the Debtor continued
25 to operate its business affairs, and made certain payments and other transfers of
26 property, either by checks, cashier checks, wire transfers, ACH transfers, direct

1 deposits, or otherwise to certain entities.

2 18. During the course of their relationship, the Debtor and Defendant entered
3 into agreements, which are evidenced by invoices, communications, and other
4 documents (collectively, the "Agreements").

5 19. The Debtor and Defendant conducted business with one another through
6 and including the Petition Date pursuant to the Agreements.

7 20. As identified in the Agreements, the Debtor purchased goods and/or
8 services from Defendant.

9 21. Plaintiff has completed an analysis of all readily available information in its
10 possession and seeks to avoid the transfers of an interest of the Debtor's property
11 made by the Debtor to Defendant within the Preference Period.

12 22. Plaintiff has determined that the Debtor made one or more avoidable
13 transfers of interests of the Debtor's property to or for the benefit of Defendant during
14 the Preference Period through payments in an amount of not less than \$67,615.70 (the
15 "Transfers").

16 23. The Transfers include, but are not limited to, the following payments:

Date	Amount
7/18/12	\$28,648.34
7/30/12	\$14,032.08
8/22/12	\$24,935.28

21 24. During the course of this proceeding, Plaintiff may learn (through
22 discovery or otherwise) of additional transfers made to Defendant during the Preference
23 Period, or that one or more of the Transfers listed in the preceding paragraph was for a
24 different amount than the amount stated. It is Plaintiff's intention to avoid and recover
25 all transfers made by the Debtor of an interest of the Debtor in property and to or for the
26 benefit of Defendant or any other transferee. Plaintiff reserves its right to amend this

1 original Complaint to include: (i) further information regarding the Transfer(s), including
2 modification and revision of the amounts, (ii) additional transfers, (iii) modifications of
3 and/or revision to Defendant's name, and (iv) additional defendants (collectively, the
4 "Amendments"), that may become known to Plaintiff at any time during this adversary
5 proceeding, through formal discovery or otherwise, and for the Amendments to relate
6 back to this original Complaint.

7 25. Plaintiff acknowledges that some of the Transfers might be subject to
8 defenses under Bankruptcy Code Section 547(c), for which Defendant bears the burden
9 of proof under Section 547(g).

10 **CLAIMS FOR RELIEF**
11 **COUNT I**

12 **(Avoidance of Preference Period Transfers - 11 USC § 547)**

13 26. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

14 27. Each Transfer was made to Defendant by Debtor.

15 28. Each Transfer constituted a transfer of an interest in property of the
16 Debtor.

17 29. Defendant was a creditor at the time of each Transfer by virtue of
18 supplying goods and/or services identified in the Agreements to the Debtor for which the
19 Debtor was obligated to pay following delivery in accordance
20 with the Agreements.

21 30. Each Transfer was to or for the benefit of a creditor within the meaning of
22 11 USC § 547(b)(1) because each Transfer either reduced or fully satisfied a debt or
23 debts then owed by the Debtor to Defendant.

24 31. Each Transfer was made for, or on account of, an antecedent debt or
25 debts owed by the Debtor to Defendant before such Transfers were made, as asserted
26 by Defendant and memorialized in the Agreements, each of which constituted a "debt"
or "claim" (as those terms are defined in the Bankruptcy Code) of Defendant prior to

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1 being paid by the Debtor.

2 32. Each Transfer was made while the Debtor was insolvent. Plaintiff is
3 entitled to the presumption of insolvency for each Transfer made during the Preference
4 Period pursuant to 11 USC § 547(f).

5 33. Each Transfer was made during the Preference Period.

6 34. As a result of each Transfer, Defendant received more than Defendant
7 would have received if: (i) the Debtor's case was under Chapter 7 of the Bankruptcy
8 Code, (ii) the Transfer had not been made, and (iii) Defendant received payment of its
9 debts under the provisions of the Bankruptcy Code. As evidenced by the Debtor's
10 schedules filed in the underlying bankruptcy case as well as the proofs of claim that
11 have been received to date, the Debtor's liabilities exceed its assets to the point that
12 unsecured creditors will not receive a full payout of their claims from the Debtor's
13 bankruptcy estate.

14 35. In accordance with the foregoing, each Transfer is avoidable pursuant to
15 11 USC § 547(b).

16 **COUNT II**
(Recovery of Avoided Transfers - 11 USC § 550)

17 36. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein,
18 to the extent they are not inconsistent with allegations contained in this Count.

19 37. Plaintiff is entitled to avoid the Transfers pursuant to 11 USC § 547(b).

20 38. Defendant was the initial transferee of the Transfers or the immediate or
21 mediate transferee of such initial transferee or the person for whose benefit the
22 Transfers were made.

23 39. Pursuant to 11 USC § 550(a), Plaintiff is entitled to recover from
24 Defendant the Transfers, plus interest thereon to the date of payment and the costs of
25 this action.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant it the following relief against Defendant:

As to Counts I and II, that the Court enter a judgment against Defendant:

a. That the Transfers avoidable under 11 USC § 547 in the total aggregate amount of not less than \$67,615.70 be avoided;

b. That the Transfers, to the extent that they are avoided pursuant to 11 USC § 547, be recovered by Plaintiff pursuant to 11 USC § 550;

c. That judgment be entered against Defendant in an amount not less than \$67,615.70 (the "Judgment");

d. Awarding pre-judgment interest at the maximum legal rate running from the date of the filing of the Complaint to the date of Judgment herein;

e. Awarding post-judgment interest at the maximum legal rate running from the date of Judgment herein until the date the judgment is paid in full, plus costs;

f. Requiring Defendant to pay forthwith the Judgment amount awarded in favor of Plaintiff; and

g. Granting Plaintiff such other and further relief as the Court deems just and proper.

Dated this 24th day of March, 2015.

SUSSMAN SHANK LLP

/s/ Timothy A. Solomon

By

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